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The Honorable Frederic Block
Senior Judge
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: **United States v. Cioffi, et al.**, No. 08-415

Dear Judge Block:

We write this letter to request that the Court strike the *eleven* new witnesses identified by the government in its letter of September 25, 2009.

The Court took great effort to narrow the issues the parties would need to focus on in discovery in order to ensure that the parties could be ready for trial in October 2009. To that end, the Court required the government to provide an initial witness list on or about May 8, 2009, Tr. 4/3/2009 at 19-24. Although the government had indicated in court that it thought it would call 15-20 witnesses, its initial list identified 60 potential trial witnesses, which it soon increased to 63. The Court required the government to narrow its list by July 14, 2009, Tr. 6/26/2009 at 26-33, and the government provided a list of 32 witnesses it intended to call at that time. Although the Court said there would be some flexibility with respect to that list, the Court directed that the government must provide a good faith list. *Id.* Thus, the defense reasonably expected that any changes to the list would be minimal, and that the government would promptly communicate any changes to its list to the defense.

At the Court's direction, on Friday—two weeks before jury selection is to begin—the government provided the Court with its trial witness list, which reflects the government's intent to call *eleven* witnesses not previously identified on its "narrowed" list of thirty witnesses provided to the defense in July, for a total of 37 trial witnesses—essentially double the estimate of 15-20 the government gave in April. With respect to most of the new witnesses, the defense has not: reviewed the 10 million plus pages

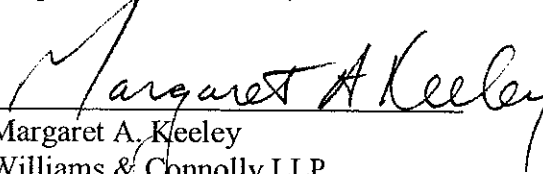
The Honorable Frederic Block
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produced by the government for documents related to them; sought third-party discovery from them; or otherwise pursued information that might assist in their examination.

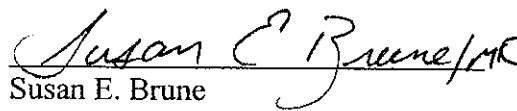
The Court required the government to identify witnesses early in order to satisfy the government's request for a prompt trial while allowing the defense to narrow its review of the vast discovery produced in this case to focus upon the persons the government actually intended to call at trial. The government's attempt to increase the list of witnesses by over one-third two weeks before trial threatens to upset the balance struck by the Court. In short: the defense is prepared to proceed with a trial of the allegations set forth in the Indictment, on the basis of the witnesses the government identified in July. It is unfair, however, to ask the defense to proceed to trial on October 13, 2009, on the myriad of new issues the government has raised in the last two weeks, much less on the basis of *eleven* new witnesses with respect to whom little or no discovery has been conducted. We thus respectfully request that the Court strike the new witnesses identified in the government's witness list of September 25, 2009, to wit:

Bella Borg Brenner
Klaus Chavanne
Ed Choi
Gerald Cummins
Kurt Dengler
Joel Dryer
Peggy O'Shea
Martin Schloss
Norman Simon
Jennifer Wu
Bear Stearns Witness re: Salary

Respectfully Submitted,


Margaret A. Keeley
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Counsel for Ralph Cioffi

and


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Counsel for Matthew Tannin